

Michigan Department of Civil Service

# REGULATION

<b>Appointing Authority Letter Reference:</b> <del>CS-6930</del> <u>CS-6938</u>	<b>Effective Date:</b> <del>October 29, 2000</del> <u>March 18, 2001</u>	<b>Index Reference:</b>  Technical Complaints	<b>Regulation Number:</b>  <b>8.03</b>
<b>Issuing Bureau:</b>  Office of Technical Complaints	<b>Rule Reference:</b>  Rules 7-5.3 (Procedure: Prior Written Approval by Civil Service Staff), 7-7.5 (Complaints or Appeals), 8-3 (Technical Complaints), and 8-4 (Summary Dismissal of Grievance Appeal or Technical Complaint)		<b>Replaces:</b>  Reg. 2.03 (CS 6858, Aug. 11, 1997 & <u>CS-6930, Oct. 29, 2000</u> )
<b>Subject:</b>  <b>TECHNICAL DISBURSEMENT COMPLAINTS</b>			

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## 1. **PURPOSE**

This regulation establishes standards and procedures for filing and processing of technical disbursement complaints, as authorized in Civil Service Rules and Civil Service Regulations.

## 2. **CIVIL SERVICE COMMISSION RULE REFERENCE**

### *Rule 7-5 Procedure: Prior Written Approval by Civil Service Staff*

\* \* \*

**7-5.3 Complaint Regarding Technical Decision** — *An interested party who participated at the staff review may file a technical disbursement complaint as provided in rule 8-3. The technical complaint must be received by the department*

*of civil service and all other interested parties within 14 calendar days after the date the technical disbursement decision is mailed.*

***Rule 7-7 Procedure: Preauthorization***

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***7-7.5 Complaints or Appeals*** — Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedures authorized in rule 7-9. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical appeal procedures in rule 8-3.

\* \* \*

***Rule 8-3 Technical Complaints***

***8-3.1 Complaint Regarding Technical Decision Authorized*** — An authorized individual, appointing authority, or organization may file a technical complaint with the department of civil service, as provided in this rule and the regulations.

\* \* \*

- (c) ***Technical disbursement complaint.*** An interested party authorized in rule 7-5.3 may file a technical disbursement complaint.

\* \* \*

***8-3.2 Time Limits***

\* \* \*

- (b) ***Other technical complaints.*** A technical classification complaint, technical qualification complaint, or technical disbursement complaint must be filed within 14 calendar days after the date the civil service staff issued the original technical decision.

### 8-3.3 Civil Service Technical Review

- (a) **Referral to technical review officer.** *If the technical complaint is not administratively dismissed under rule 8-4 [Summary Dismissal], a technical review officer shall conduct an expeditious review in accordance with the civil service rules and regulations.*
- (b) **Technical review procedures.**
- (1) **Hearing not authorized.** *A technical review officer is not authorized to conduct a hearing.*

\* \* \*

- (3) **Technical review decision.** *At the conclusion of the technical review, the technical review officer shall issue a final technical review decision setting forth the review officer's material findings of fact, conclusions of law, and remedial orders, if any. The final technical review decision shall be based on (1) the technical expertise of the review officer, (2) the civil service rules and regulations, (3) departmental records, and (4) the documents and written submissions of the parties. In a review of a technical appointment complaint, the technical review officer shall also consider the written recommendation of the hearing officer on any certified question of fact.*

**8-3.4 Further Appeal to Commission Authorized** — *An interested party in a technical review proceeding may file an appeal of a final technical review decision, including a summary dismissal of the technical complaint, to the civil service commission, as provided in the civil service rules and regulations.*

### 8-3.5 Effective Date of Decision of Technical Review Officer

\* \* \*

- (b) **Technical disbursement review.** *A final technical review decision on a technical disbursement complaint is effective as follows:*

(1) **Request approved.**

(A) *If an initial civil service staff decision approving a request became effective under rule 7-5.2 [Effective Date of Staff Decision], a decision of a technical review officer also approving the request is effective immediately and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.*

(B) *If civil service staff initially denied a request, a technical review decision approving a request is effective 15 calendar days after the date the decision is issued, unless a later date is specified in the decision. An interested party intending to appeal the technical review decision to the civil service commission may file a request that the state personnel director order the effective date of the decision stayed pending appeal. The request for a stay must be filed within 14 calendar days after the date the technical review decision is issued. The director may stay the effective date of the technical review decision pending appeal to the commission if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interests of the classified service.*

(2) **Request denied.** *If civil service staff initially approved a request, a technical review decision disapproving the request is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or (2) an interested party files a timely application for leave to the civil service commission within 28 calendar days after the date the decision was issued. If an interested party files a timely application for leave to appeal, the effective date of the technical review decision is automatically stayed and*

*the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.*

\* \* \*

**Rule 8-4 Summary Dismissal of Grievance Appeal or Technical Complaint —**  
*A civil service adjudicating officer may summarily dismiss a grievance appeal or technical complaint for any of the following reasons:*

- (a) **Not authorized.** *The grievant or technical complainant is not authorized to file the grievance, grievance appeal, or technical complaint.*
- (b) **Lack of jurisdiction.** *The department of civil service lacks jurisdiction over a necessary party or over the subject matter of the grievance appeal or technical complaint.*
- (c) **Untimeliness.** *The grievance, grievance appeal, or technical complaint was not filed timely.*
- (d) **Another action pending.** *Another civil service action has been initiated between the same parties involving substantially the same grievance or technical complaint.*
- (e) **Barred by prior claim.** *Substantially the same grievance or technical complaint was adjudicated to finality in another action between the same parties.*

### 3. **DEFINITIONS**

#### A. **Civil Service Commission Rule Definitions**

- 1. **Adjudicating officer** *means the state personnel director or other civil service administrative officer, technical review officer, hearing officer, arbitrator, or other officer authorized to make a decision reviewable by the civil service commission.*

2. **Department** means the department of civil service.
3. **Good cause** means an acceptable excuse for failing to file or take other required action timely. Good cause does not include a person's own carelessness, negligence, or inattention to the filing or other requirements.
4. **Interested party**, in a review of a technical disbursement complaint, means a party that filed a request or a written appearance in the initial civil service staff review of the request.
5. **Party** in a review of a technical disbursement decision, means any of the following:
  - (1) The appointing authority that files a request to contract for personal services.
  - (2) An exclusive representative of a classified employee with a direct interest in the technical disbursement decision.
  - (3) A nonexclusively represented classified employee with a direct interest in the technical disbursement decision.
  - (4) A limited recognition organization appearing on behalf of a classified employee with a direct interest in the technical disbursement decision.
  - (5) The office of the state employer.
  - (6) Any other person or organization with a demonstrable special interest in the technical disbursement decision who (1) petitions to participate in the civil service staff review and (2) is authorized by the department of civil service to participate in the review.
6. **Technical complainant** means any of the following persons when directly affected and aggrieved by a technical decision:
  - (a) An applicant for employment.

- (b) *A classified employee.*
- (c) *An appointing authority.*
- (d) *The office of the state employer.*
- (e) *Any other person or organization specifically authorized by civil service rule or regulation to file a technical complaint.*

**7. *Technical complaint*** means a written complaint that a technical decision (1) violated article 11, section 5, of the Michigan constitution, (2) violated a civil service rule or regulation, or (3) was arbitrary and capricious.

**8. *Technical decision*** includes each of the following individual decisions:

\* \* \*

- (c) ***Technical disbursement decisions*** means a civil service staff decision approving or disapproving disbursements for personal services.

\* \* \*

#### **4. STANDARDS**

##### **A. Filing of Complaints Regarding Preauthorized Services**

1. Any complaint regarding the use of the preauthorized approval process or any disbursements for personal services made or authorized under the preauthorized approval process may be brought only under the procedure authorized in rule 7-9.
2. Any complaint regarding a technical decision to add personal services to the preauthorized list may be brought only by an interested party under the technical complaint procedures in rule 8-3 and this regulation.

##### **B. Filing of Complaints Regarding Nonpreauthorized Services**

**1. Authorized to Complain**

Only an interested party who participated in the timely submission of all relevant data and information at the initial staff review may file a technical disbursement complaint with the Department of Civil Service, Office of Technical Complaints. The technical disbursement complaint must be submitted using the Technical Disbursement Complaint form (CS-212c). The technical complainant must simultaneously file a copy of the complaint with all interested parties and must file a proof of service with the Office of Technical Complaints.

**2. Complaint.** The complaint must include the following:

- a. All information required in Part A of the Technical Disbursement Complaint form (CS-212c) for each complainant.
- b. A clear and concise description of the technical decision being complained of.
- c. A complete statement of why the technical decision (1) violated Article II, Section 5 of the Michigan Constitution; (2) violated a Civil Service rule or regulation; or (3) was arbitrary and capricious.
- d. All documentary evidence that the complainant believes supports the technical complaint.
- e. A clear statement of the desired outcome of the complaint. The outcome must be within the authority of the Department of Civil Service to grant.
- f. The signature of each complainant.
- g. The names, mailings, and email address of the complainant's representative, if any.

**C. Time Limitations for Filing Technical Complaints.** To be timely, the complaint must be received by the Department of Civil Service within 14 calendar days after the mailing date of the technical decision.



**D. Extension for Filing.** Upon the filing of an explanation of good cause with the Office of Technical Complaints before the expiration of the required time for filing, the technical review officer may grant an extension of time for filing.

**E. Administrative Denial of Complaint**

**1. Reasons for Administrative Denial.** In accordance with rule 8-4, a technical disbursement complaint may be administratively dismissed without prior notice for any of the following reasons:

- a.** The complaint fails to set forth allegations with sufficient particularity to permit review.
- b.** The complaint involves one or more of the following actions, decisions, and matters that are not subject to review:
  - (1)** Michigan Civil Service Commission Rules.
  - (2)** Department of Civil Service regulations, standards, and procedures.
- c.** The complaint fails for other good and sufficient reason to warrant further review.

**F. Technical Review Decisions**

**1. Technical Review Process.** A technical review officer is not authorized to conduct a hearing, but may meet with the complainant or other interested parties to discuss the complaint. Decisions of the technical review officer shall be based on the technical expertise of the technical review officer and a *de novo* review of all submissions of interested parties, departmental records, civil service rules and regulations.

**2. Decision of the Technical Review Officer.** The decision of a technical review officer shall contain notice of the right of interested parties to file an application for leave to appeal to the Civil Service Commission, as provided in Regulation 8.05, Employment Relations Board: Appeal Procedures.

## **G. Implementing Technical Review Decisions**

- 1. Technical disbursement review.** A final technical decision on a technical disbursement complaint is effective as follows:

### **A. Request approved.**

- 1.** If an initial civil service staff decision approving a request became effective under rule 7-5.2 [Effective Date of Staff Decision], a decision of a technical review officer also approving the request is effective immediately and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.
- 2.** If civil service staff initially denied a request, a technical review decision approving a request is effective 15 calendar days after the date the decision is issued, unless a later date is specified in the decision. An interested party intending to appeal the technical review decision to the civil service commission may file a request that the state personnel director order the effective date of the decision stayed pending appeal. The request for a stay must be filed within 14 calendar days after the date the technical review decision is issued. The director may stay the effective date of the technical review decision pending appeal to the commission if the director determines that (1) it is unlikely that the request meets any of the standards for approval and (2) a stay is in the best interests of the classified service.

- B. Request denied.** If civil service staff initially approved a request, a technical review decision disapproving the request is final and binding on the parties 29 calendar days after the date the decision is issued, unless either (1) the decision provides for a later effective date or

(2) an interested party files a timely application for leave to the civil service commission within 28 calendar days after the date the decision was issued. If an interested party files a timely application for leave to appeal, the effective date of the technical review decision is automatically stayed and the appointing authority may continue to make disbursements for the personal services until the civil service commission or a court of competent jurisdiction rules otherwise.

## 5. **PROCEDURE**

### **Responsibility**

Department of Civil Service

Technical Complainant

### **Action**

1. Mails technical decision to interested parties.

2. Prepares technical complaint and submits to the Office of Technical Complaints, Department of Civil Service.

### **Responsibility (cont.)**

Technical Complainant

Office of Technical Complaints

### **Action (cont.)**

3. Provides a copy of the technical complaint to the appointing authority and any other identified interested parties.

4. Upon receipt of the technical complaint, conducts preliminary review to determine timeliness and sufficiency of the complaint.

5. If the complaint is untimely or fails to meet the requirements of this regulation, dismisses the technical complaint.

6. If the complaint is properly submitted, obtains additional information from the appointing authority and other interested parties, if required.

7. If necessary, meets with the technical complainant and any other interested parties to review and discuss the complaint.

8. Prepares and issues technical complaint decision.

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Complainant or Interested Party      9. May apply for leave to appeal to the Civil Service Commission.

### **CONTACT**

Questions regarding this regulation should be directed to the Office of Technical Complaints, Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, at (517) 241-7243.

**NOTE:** Regulations are issued by the State Personnel Director under authority granted in the State of Michigan *Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.